

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Broadcast Localism	)	MM Docket No. 04-233
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**COMMENTS OF  
THE CAMPAIGN LEGAL CENTER AND THE ALLIANCE FOR BETTER  
CAMPAIGNS**

**Introduction and Summary**

The Campaign Legal Center and the Alliance for Better Campaigns respectfully submit these comments in response to the Federal Commission's *Notice of Inquiry on Broadcast Localism*, MM Docket No. 04-233, (rel. July 1, 2004)(*NOI*), specifically those paragraphs regarding political programming (paragraphs 19 through 23) and license renewals (paragraphs 40 through 42).

The Campaign Legal Center and the Alliance for Better Campaigns are nonpartisan, nonprofit organizations that are dedicated to political broadcasting policy, promoting awareness and enforcement of political broadcasting laws, and revitalizing competition in our democratic process by ensuring that the public airwaves serve as a forum for open and vibrant political debate, especially among candidates. As reform community leaders representing the public interest, we commend the Commission for inquiring about localism issues and it is our hope that this NOI will impel the Commission to take action on these very important topics.

These comments express our deep concern regarding the continual decline in the amount of broadcast news coverage of campaign and election issues in recent years. We request that the Commission adopt a policy requiring broadcast licensees to devote at least a reasonable minimum standard of time to local civic and electoral affairs discourse, as well as adopt measures that will strengthen disclosure requirements for broadcast stations, including a requirement to post political public file information on-line for greater public access.

**Decline in Political Programming**

Broadcast licensees are public trustees; coverage of political discourse is part of broadcasters' current obligations. Broadcasters have been granted by the government free use of the enormous power, potential and capacity of the publicly-owned analog and digital airwaves which have been estimated to be worth hundreds of billions of dollars. In return, the public expects – and our democracy requires – the FCC to define meaningful public interest requirements so that this grant of spectrum will benefit not only broadcasters, but also our

national and local communities.<sup>1</sup> As FCC Commissioner Jonathan Adelstein stated this year at a *Public Interest, Public Airwaves Coalition* press conference, “the FCC is supposed to ensure that broadcasters serve the public interest in exchange for free use of the public airwaves. This cornerstone of broadcasting was articulated as early as 1927 - that stations must be operated as if they were owned by the public; as if a community got together and turned the station over to the best person to manage it in the community's interest. Broadcasters would therefore be the conscience of our communities, a proxy for each of our voices and views.”<sup>2</sup> Congress and the courts have consistently affirmed that broadcasters must provide an effective outlet to present political discourse - an outlet that promotes a more informed electorate.<sup>3</sup> However, current research, which is detailed in this filing, shows that broadcasters have failed to fulfill their obligation.

Broadcast television continues to be the primary source of campaign election information for the American public. During every election cycle, America turns on the television to get informed about candidates and election issues. A 2004 survey report conducted by the Pew Research Center on campaign news and political communication demonstrates that 42% of Americans rely on local TV news for information about the presidential campaign, more than any other news category.<sup>4</sup> However, the public is poorly informed on candidate facts and issues. Looking at the Democratic presidential primary coverage this year, only “31% [could] correctly identify Wesley Clark as the Democratic candidate who had served as an Army general and 26% [knew] Richard Gephardt [was] the candidate who had served as House majority leader.”<sup>5</sup>

Similarly in 2000, more voters turned to television than any other source for their election news, according to Pew.<sup>6</sup> However, according to a poll conducted by the Vanishing Voter Project at Harvard University just two days before the election, a majority of the public was either misinformed or unaware of the basic planks of the presidential candidates’ platforms. When questioned about key issue positions taken by each candidate, a majority correctly identified only one in six for George W. Bush and Al Gore. On such issues as Social Security, school vouchers, defense spending, gun control and affirmative action, most of the public either did not know or misidentified the candidates’ positions.<sup>7</sup>

Television coverage of political discourse is minimal and declining. Many studies have documented the continual decline in the amount of broadcast news coverage of campaign and

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<sup>1</sup> Letter from Public Interest, Public Airwaves Coalition to Michael Powell, FCC Chairman (Jul. 7, 2004) (on file with the FCC).

<sup>2</sup> FCC Commissioner Jonathan Adelstein, Remarks before the Public Interest, Public Airwaves Press Conference Las Vegas, Nevada (Apr. 20, 2004) (transcript available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-246483A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-246483A1.pdf)).

<sup>3</sup> See 1992 Cable Television Consumer Protections and Competition Act, Pub. L. 102-385, 106 Stat. 1460; Children’s Television Act of 1990, Pub. L. 101-437, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., 47 U.S.C. Secs. 202a-b; *Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1969); *Turner Broadcasting Sys., Inc. v. FCC*, 114 S.Ct. 2445, 2456-57 (1994); *CBS, Inc. v. FCC*, 453 U.S. 367, 395.

<sup>4</sup> The Pew Research Center for the People and the Press, *Cable and Internet Loom Large in Fragmented Political News Universe* (Jan. 11, 2004) available at <http://people-press.org/reports/display.php3?ReportID=200> (last visited Oct. 27, 2004).

<sup>5</sup> *Id.*

<sup>6</sup> The Pew Research Center for the People and the Press, *Campaign 2000 Highly Rated* (Nov. 16, 2000) available at <http://people-press.org/reports/display.php3?PageID=144> (last visited Oct. 27, 2004).

<sup>7</sup> Joan Shorenstein Center (Harvard University, John F. Kennedy School of Government), *Vanishing Voter Project* (2000) available at <http://www.vanishingvoter.org/VV2000/Data/cand-knowledge.shtml> (last visited Oct. 27, 2004).

election issues. We find again this election year that there is evidence that broadcasters are not committed and are not fulfilling their obligation despite previous initiatives by the FCC, members of Congress and the media reform community to encourage voluntary change. As a result, there is little substantive coverage of campaigns and elections, particularly at the local level. Research conducted by the Lear Center Local News Archive (USC Annenberg School and the University of Wisconsin NewsLab), the Center for Media and Public Affairs and the Committee for the Study of the American Electorate have concluded the following disturbing trends in regard to broadcast coverage over time:

### **Local news broadcasts contain inadequate election coverage**

- More than half all top-rated local news broadcasts in the seven weeks leading up to Election Day in 2002 did not contain any campaign coverage whatsoever.<sup>8</sup>
- Local public affairs shows account for less than one half of 1% of all programming on local television. Most local public affairs programming airs in the early morning hours on Saturdays and Sundays, when viewership is lowest.<sup>9</sup>
- Only 28% of the 2002 local news broadcasts on campaigns contained candidate sound bites, which only averaged 12 seconds.<sup>10</sup>
- Less than 15% of election stories on the local news in 2002 covered local campaigns, including U.S. House races.<sup>11</sup>
- Only about one-fifth of the hundreds of gubernatorial, senatorial and congressional debates in 2000 and 2002 were aired by network-affiliated local television stations. Approximately 60% were never aired by either a network affiliate or public television station.<sup>12</sup>

### **Network news coverage of elections continues to decline**

- The four major networks (ABC, CBS, NBC and Fox) devoted just 8% of their news hole to election coverage in the two weeks leading up to the 2004 Super Tuesday primaries. The majority (58 percent) of election stories focused on campaign strategy or horse race aspects, rather than candidates' backgrounds or policy proposals. The typical candidate soundbite ran for about 13 seconds.<sup>13</sup>

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<sup>8</sup> Lear Center Local News Archive (USC Annenberg School and the University of Wisconsin), *Local TV News Coverage of the 2002 General Election* (Jul. 23, 2003) available at <http://learcenter.org/pdf/LCLNARReport.pdf> (last visited Oct. 27, 2004).

<sup>9</sup> Alliance for Better Campaigns, *All Politics is Local, But You Wouldn't Know it by Watching Local TV* (Oct. 22, 2003) available at <http://www.ourairwaves.org/reports/display.php?ReportID=12> (last visited Oct. 27, 2004).

<sup>10</sup> Lear Center Local News Archive (USC Annenberg School and the University of Wisconsin), *Local TV News Coverage of the 2002 General Election* (Jul. 23, 2003) available at <http://learcenter.org/pdf/LCLNARReport.pdf> (last visited Oct. 27, 2004).

<sup>11</sup> *Id.*

<sup>12</sup> Committee for the Study of the American Electorate, *Debates Held, Debates Not Seen: Nearly Two-Thirds of 2000 Debates for Governor, U.S. Senate and Congress Not Televised* (June 2002). Committee for the Study of the American Electorate, *2002 Governor, U.S. Senate and House Debates not Televised by 82 Percent of Stations; Nearly 60 Percent of Debates Go Untelecast* (Aug. 17, 2004).

<sup>13</sup> Alliance for Better Campaigns, *Network News Coverage of '04 Primaries Falls Short, Study Finds* (May 2004) available at <http://www.ourairwaves.org/standard/display.php?StoryID=314> (last visited Oct. 27, 2004).

- The amount of coverage of elections on the Big Three networks' nightly newscasts dropped 71.6% from 1994 to 2002.<sup>14</sup>
- The average length of presidential candidate sound bites on network evening news dropped 81% from 1968 to 2000.<sup>15</sup>
- Network evening news coverage of presidential campaigns dropped 33% from 1996 to 2000.<sup>16</sup>
- ABC, CBS and NBC aired a total of just 18 hours of convention coverage in 2004 (one hour per night on three nights, per convention). In 1980, the networks devoted 100 hours to coverage of the parties' nominating conventions.

**Of the stories that did run, most were about strategy and polls as opposed to issues.**

- Almost half (45%) of network election stories for the 2000 primaries contained extensive discussions of the horserace, while the proportion of substantive, issue-based coverage fell by half compared to 1996.<sup>17</sup>
- Only 24% of the campaign stories on local news broadcasts during the 2002 general election were about issues. Thirty-eight percent (38%) of the stories focused on strategy, and 9% focused on the horserace.<sup>18</sup>
- In the month leading up to the New Hampshire primary in 2004, only 17% of the stories on the ABC, CBS and NBC nightly news investigated the candidates' voting records, proposals or stances on issues, as opposed to 71% of the stories focusing on poll numbers and behind-the-scenes campaign tactics.<sup>19</sup>

These figures, among others, point out a troubling trend in broadcast journalism wherein broadcasters are not fulfilling their obligation to adequately inform the public on campaign and election issues. We believe this is not likely to change unless the FCC mandates specific requirements for coverage. The FCC must act now to foster political discourse on the publicly-owned airwaves. There have been a number of efforts in recent years to improve broadcasters' coverage of elections and civic affairs. We bring a few such recommendations to your attention.

First, in 1998, the President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters issued a report, "Charting the Digital Broadcasting Future", which recommended that stations voluntarily devote five minutes of airtime to candidate centered discourse for 30 nights preceding elections (known colloquially as the "5/30 standard").

<sup>14</sup> Press Release, The Center for Media and Public Affairs, *Election Study Finds Absentee Media* (Nov. 01, 2002) available at <http://www.cmpa.com/pressReleases/ElectionStudyFindsAbsenteeMedia.htm> (last visited Oct. 27, 2004).

<sup>15</sup> The Center for Media and Public Affairs, *Campaign 2000 Final: How TV News Covered the General Election Campaign* (Nov. /Dec. 2000).

<sup>16</sup> The Center for Media and Public Affairs, *Networks to Parties: 'Drop Dead'* (Jul. 31, 2000) available at <http://www.cmpa.com/election2004/index.htm> (last visited Oct. 27, 2004).

<sup>17</sup> The Center for Media and Public Affairs, *Campaign 2000-The Primaries: TV News Coverage of the Democratic and GOP Primaries* (Mar. /Apr. 2000).

<sup>18</sup> Lear Center Local News Archive (USC Annenberg School and the University of Wisconsin), *Local TV News Coverage of the 2002 General Election* (Jul. 23, 2003) available at <http://learcenter.org/pdf/LCLNARreport.pdf> (last visited Oct. 27, 2004).

<sup>19</sup> Press Release, The Center for Media and Public Affairs, *Network News Focus: Flubs, Fluff-Not Fundamental* (Feb. 9, 2004) available at <http://www.cmpa.com/pressReleases/NetworkNewsFocus.htm> (last visited Oct. 27, 2004).

However, compliance with this recommendation has been lackluster. According to a 2000 study by the Norman Lear Center (a project of the University of Southern California's Annenberg School for Communication), just 7% of the nation's 1,300 commercial local television stations made any attempt to comply with the 5/30 standard. There is some evidence that a station's commitment to the 5/30 standard had an impact on its coverage: stations that had made a voluntary commitment aired nearly three times as much political coverage as the stations with no such commitment. Even then, the 'committed' stations averaged only about two minutes of candidate-centered discourse each night, far short of the five minute goal.

Second, the President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters also recommended that the FCC adopt a set of minimum public interest requirements for digital television broadcasters. Following this recommendation, the *Public Interest, Public Airwaves Coalition* has proposed a quantitative standard – in the form of a processing guideline – for local civic and electoral affairs coverage, modeled after the three-hour rule in the Children's Television Act.

Finally, we note that there have been other proposals to provide free or reduced-cost air time to political candidates. The President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters proposes repeal of the 'lowest unit charge' requirement in return for some free time, such as one minute of free time for each two minutes of time sold; creating a broadcast bank to provide money or vouchers for time to candidates and parties; and prohibiting blanket bans on the sale of air time to all state and local candidates. In addition, Senator John McCain [R-Ariz.] and Russell Feingold [D-Wis.] have proposed the "Our Democracy, Our Airwaves Act." That legislation would ensure that broadcasters air at least a minimum amount of candidate discourse in the period just before elections; allow congressional candidates who raise small-dollar contributions to earn vouchers to purchase broadcast advertising time; close loopholes in the lowest unit charge law; and increase disclosure of political advertising buys.

**We recognize that there may be other methods of promoting political discourse on the airwaves, but we believe a quantitative standard, set forth by the Commission, is a necessary first step.**

### **Increased Disclosure**

We ask that the Commission require disclosure of political public file information on broadcasters' websites. Currently, broadcasters are only required to keep hard copies of these files at their station headquarters which is discouraging for citizens who wish to access the information. Website posting of political file records would reduce the amount of time broadcasters spend responding to requests for information during busy pre-election periods. It would also make the public file easier to read and more readily available to candidates and the public. We urge that there be disclosure of more information on the precise broadcast times and sponsors of political advertisements and public service announcements. Website posting would enhance candidates' abilities to take advantage of equal time opportunities and likely promote discourse and public comment, potentially reducing the need for further regulation. Moreover, facilitating access to true sponsorship identification via a website would assist in addressing recent concerns regarding secretive organizations running issue advertisements on television.

Further, we ask the Commission to adopt a standardized form for stations to use when reporting political advertising buys. The current lack of a universal standard for record-keeping makes it difficult to analyze and compare candidate advertising logs from different stations. The form should include the following information:

- Name of the candidate, political party or issue group purchasing advertising time, and, for candidate and party ads, the office being sought;
- Name, mailing address and telephone number of the media buyer;
- Date, time and program in which the ad aired;
- Length of the ad;
- Price of the ad; and
- Class of time purchased.<sup>20</sup>

We also recommend that the Commission develop a standardized form for stations to report their local civic and public affairs programming. The current issues/programs lists do not provide an effective means for the public to assess licensees' performance. Because the requirement of listing programs "that have provided the station's most significant treatment of community issues" is so vague, these lists lack uniformity and consistency and make it difficult to discern the amount and type of public interest programming a broadcaster carries.<sup>21</sup> The Institute for Public Representation, on behalf of the *Public Interest, Public Airwaves Coalition*, has submitted a proposed form to the Commission for consideration. The form requires broadcasters to disclose the amount and nature of programming in the following areas:

- Local civic affairs programming;
- Local electoral affairs programming;
- Independently produced programming;
- Locally-oriented programming;
- Programming that serves the needs of underserved communities;
- Public service announcements (both donated and paid); and
- Religious programming.

The Commission clearly has the authority to mandate that which is proposed -- requiring broadcasters to post file information on their websites, and for the FCC to adopt a standardized form for stations to use when reporting political advertising buys and their local civic and public affairs programming. As the court has pointed out, "there is no question but that the Commission has the statutory authority to require whatever recordkeeping requirements it deems appropriate."<sup>22</sup> The information resulting from these increased disclosure measures will help provide information to the public and ensure that the Commission has the appropriate and complete information to determine whether broadcast license holders are fulfilling their statutory public interest obligations.

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<sup>20</sup> It should be clear whether the ad was non-preemptible, preemptible with notice, or immediately preemptible. Such information can help the Commission determine compliance with the "lowest unit charge" statute.

<sup>21</sup> *Ex-parte* communication with the FCC's Media Bureau staff, filed by Institute for Public Representation on behalf of the *Public Interest, Public Airwaves Coalition* (May 14, 2004) (on file with the FCC) available at [http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516184448](http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516184448).

<sup>22</sup> See *Office of Communication of United Church of Christ v. FCC*, 47 USC §303(j) 779 F.2d 702, 707 (D.C. Cir. 1985).

## **Lowest Unit Charge to Candidates**

The lowest unit charge (LUC) regulation was designed to ensure that candidates are not penalized by normal market forces for their need to advertise in a compressed period of time prior to an election. Broadcasters must offer qualified candidates the same advertising rates that are given to their most favored product advertisers. However, a candidate's acceptance of the LUC rate usually has a stipulation that ads bought at the LUC rate can be preempted by the station, often without any notice, if another advertiser is willing to pay more for that particular time slot. According to recent studies:

- In 2000, the typical candidate ad sold, on average, at 65% above the station's lowest published rate.<sup>23</sup>
- The average cost for political spots in 17 hotly contested U.S. Senate and congressional races in 2000 rose from less than \$500 in mid-August to more than \$1200 in the final week of the campaign.<sup>24</sup>
- Local television stations increased the price of candidate ads by an average of 53% in the two months before the 2002 election.<sup>25</sup>

We urge the Commission to clarify the 1971 lowest unit charge regulation by eliminating the word "class" from the regulation requiring stations to charge "the lowest charge of the station for the same class and amount of time for the same period." As interpreted and enforced by the FCC, the law says that stations are in compliance if they offer candidates the best rate available for a given "class" of ad time. Over the years, stations have created more and more classes of ad time – immediately preemptible, preemptible with 24 hours notice; preemptible with five days notice; non-preemptible; etc. As long as the candidate receives the lowest rate within a given class, stations are technically in compliance – even though this pricing structure inevitably steers candidates toward the most expensive time. Thus the original intent of the LUC provision – to peg candidate ad rates to discount prices paid by volume product advertisers – is no longer served.

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<sup>23</sup> Alliance for Better Campaigns, *Gouging Democracy: How the television industry profiteered on Campaign 2000* (Mar. 6, 2001) available at <http://www.ourairwaves.org/reports/display.php?ReportID=4>.

<sup>24</sup> Center for the Study of Elections and Democracy (Brigham Young University), *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections* (Feb. 2000) available at <http://csed.byu.edu/Publications/Election%20Advocacy/Overview.pdf>.

<sup>25</sup> Alliance for Better Campaigns, *Profiteering on Democracy* (July 23, 2003) available at <http://www.ourairwaves.org/reports/display.php?ReportID=11>.



## **License Renewal**

The FCC, in order to ensure that broadcasters are complying with their obligations as public trustees, requires stations to file for license renewal every eight years. In the past, these license renewal applications contained detailed information about how the stations had served the “public interest, convenience and necessity” on inter alia, children’s programming, local content, and programming that addressed issues of importance to the community.

However, in recent years the license renewal process has become more lax, to the point where stations submit little more than a postcard, and the FCC grants renewals with minimal review of a station’s public interest activities and no outreach to the local community that the station is charged with serving. FCC Commissioner Michael Copps decried this practice before the Senate Commerce Committee:

...[W]e need a process to ensure that licensees are serving their local communities. As one part of this effort, we should establish an effective license renewal process under which the Commission would once again actually consider the manner in which a station has served the public interest when it comes time to renew its license. The Commission formerly did that. But the system has degenerated into one of basically post-card license renewal. Unless there is a major complaint pending against a station, its license is almost automatically renewed. A real, honest-to-goodness and properly-designed license renewal process, predicated on advancing the public interest, would avoid micro-management on a day-to-day basis in favor of a comprehensive look at how a station has discharged its public responsibilities over the term of its license.<sup>26</sup>

As the above facts and trends clearly demonstrate the FCC must take the following actions in order to fulfill its mission as steward of the publicly-owned airwaves. First, the FCC should set out clearer guidelines/standards for making the license renewal decisions. More predictable and measurable standards will enable the FCC to make judgments based on more objective information and allow license holders to rise to these standards because they would know more clearly what expectations they must meet to renew their license. Such predictability would help their business model by moving away at least some part of these renewal decisions from the arena of subjectivity. Such standards would also provide a more reasoned model for those in local communities who wish to challenge a license holder.

Second, the FCC should institute as part of the renewal process the sort of interim review use in the Equal Employment Opportunity (EEO) order. The current renewal term is eight years. [It was originally three and then changed to five. The eight-year term was changed in 1996.] While many support a statutory change to return to a shorter period, the FCC currently has the authority to add an interim review. Any localism rules adopted should include an interim review at the mid-point of the current eight year term.

Third, the FCC should require increased reporting by stations of the programming that serves the public interest. Such reports should be completed quarterly and placed in the stations’ public files. Such information is not only crucial so that the FCC has this information so that it

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<sup>26</sup> Commissioner Michael Copps, Testimony at U.S. Senate Commerce Committee Hearing (July 23, 2003) (transcript available at [http://commerce.senate.gov/hearings/testimony.cfm?id=874&wit\\_id=2428](http://commerce.senate.gov/hearings/testimony.cfm?id=874&wit_id=2428)).



can effectively oversee the broadcast industry, but also would enable citizens, watchdog organizations and media scholars to conduct systematic research on broadcaster performance.

Fourth, we urge the agency to implement new, regularly scheduled audits of broadcasters' files in order to ensure compliance with obligations. Where potential license violations are found, we urge the Commission to begin investigations or hearings on its own initiative, and to assess fines where violations are found.

Finally, we note that proceedings on other issues will have an impact on localism and the efficacy of any license renewal provisions. Earlier in these comments we noted the importance of meaningful disclosure. An additional proceeding – this one to determine whether there should be a requirement for a licensee to keep a programming archive – is also related to the license renewal process and localism. In our view, the FCC does not currently have the information it needs about the operations of license holders to make wise license renewal decisions, much less other national telecommunications policies. We urge the FCC to take a close look at how these tools are closely linked to the agency's ability to perform its duties, especially as they relate to license renewals.

## **Conclusion**

Broadcasters have a statutory obligation to use the power of their licenses to serve their local communities. Because too few stations are meeting this crucial obligation, we recommend that the Commission adopt policies requiring broadcast licensees to devote a reasonable standard of time to local civic and electoral affairs discourse. In addition, we support measures that would strengthen the ability of the Commission to fulfill its duties as steward of the publicly-owned airwaves – including strengthening disclosure requirements for broadcast stations and expanding and clarifying the license renewal process. We respectfully urge the Commission to take action in accordance with the foregoing views.

Respectfully submitted,

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